



Entered on Docket  
July 25, 2007

A handwritten signature in black ink, appearing to read "Linda B. Riegle".

Hon. Linda B. Riegle  
United States Bankruptcy Judge

6 STUTMAN, TREISTER & GLATT, P.C.  
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8 EVE H. KARASIK  
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14 Equity Security Holders Of USA Capital First Trust Deed Fund, LLC

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15 **UNITED STATES BANKRUPTCY COURT**  
16 **DISTRICT OF NEVADA**

17 In re: USA COMMERCIAL MORTGAGE COMPANY, Debtor.	) BK-S-06-10725-LBR Chapter 11
18 In re: USA CAPITAL REALTY ADVISORS, LLC, Debtor.	) BK-S-06-10726-LBR Chapter 11
19 In re: USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC, Debtor.	) BK-S-06-10727-LBR Chapter 11
20 In re: USA CAPITAL FIRST TRUST DEED FUND, LLC, Debtor.	) BK-S-06-10728-LBR Chapter 11
21 In re: USA SECURITIES, LLC, Debtor.	) BK-S-06-10729-LBR Chapter 11

22 Affects

- All Debtors
- USA Commercial Mortgage Co.
- USA Securities, LLC
- USA Capital Realty Advisors, LLC
- USA Capital Diversified Trust Deed
- USA First Trust Deed Fund, LLC

1           **STIPULATION AND ORDER FOR FIRST TRUST DEED FUND EQUITY SECURITY**  
 2           **HOLDERS COMMITTEE TO REPRESENT FIRST TRUST DEED FUND IN**  
 3           **COMPLAINT FOR "CONDITIONAL REVOCATION OF CONFIRMATION ORDER**  
 4           **UNDER 11 U.S.C. § 1144 AND RESCISSION OF ASSET PURCHASE AGREEMENT"**  
 5           **[AFFECTS USA CAPITAL FIRST TRUST DEED FUND]**

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 10          USA Capital First Trust Deed Fund, LLC ("FTDF") and The Official Committee  
 11 of Equity Security Holders of USA Capital Trust Deed Fund, LLC (the "FTDF COMMITTEE")  
 12 represent and stipulate as follows:

13           **I. BACKGROUND**

14          1. USA Commercial Mortgage Company ("USACMC") and FTDF filed  
 15 petitions for relief under Chapter 11 of the Bankruptcy Code on April 13, 2006. The cases are  
 16 jointly administered, and both of these debtors and their affiliates are jointly represented by Ray  
 17 Quinney & Nebeker P.C. and the Schwartzer & McPherson Law Firm.

18          2. On December 7, 2006, the above-captioned debtors and debtor in  
 19 possession (the "Debtors") held an auction before the Bankruptcy Court for the sale of the FTDF  
 20 Loan portfolio and certain assets of USACMC. Compass Partners, LLC ("Compass") was the  
 21 successful purchaser at the auction (the "Compass Sale"). The sale to Compass was to be  
 22 approved pursuant to the "Debtor's Third Amended Joint Chapter 11 Plan of Reorganization"  
 23 (the "Plan").

24          3. The Court confirmed the Plan following the confirmation hearings held on  
 25 December 19 and 20, 2006 and entered its order confirming the Plan, including approval of the  
 26 Compass Sale, on January 8, 2006 (the "Confirmation Order"). The Compass Sale closed on  
 27 February 16, 2007, and the Effective Date of the Plan occurred on March 12, 2007.

28          4. On July 7, 2007, Compass USA SPE, LLC, Compass Financial Partners,  
 29 LLC, a Nevada, a limited liability corporation LLC, and Compass Financial Partners, LLC a  
 30 Delaware a limited liability corporation, filed their Complaint for "Conditional Revocation of  
 31 Confirmation Order under 11 U.S.C. § 1144 and Rescission of Asset Purchase Agreement" (the  
 32 "Compass Action") and named the FTDF, among others, as a defendant.

## II. SCOPE OF REPRESENTATION

5. Through this stipulation, and subject to Court approval, FTDF authorizes the FTDF COMMITTEE to represent the estate of the FTDF in the Compass Action discussed above. There does not appear to be any conflict in these matters which would prevent the FTDF COMMITTEE from representing the estate of FTDF in the Compass Action.

6                 6.         Stutman, Treister & Glatt, Professional Corporation ("STUTMAN") and  
7 Shea & Carlyon ("S&C") were court-approved counsel for FTDF COMMITTEE in the  
8 bankruptcy case and authorized to represent FTDF COMMITTEE post-effective date pursuant to  
9 the Plan and applicable Court orders, including the Court's "Order Granting Second Joint Motion  
10 for Order for Implementation of Confirmed Plan" entered on March 5, 2007 (the "Second  
11 Order"). STUTMAN and S&C will represent FTDF COMMITTEE as the representative of the  
12 FTDF estate in the Compass Action, and will continue to represent the FTDF COMMITTEE in  
13 all other matters in the bankruptcy case.

### III. COMPENSATION

15           7. FTDF proposes that STUTMAN and S&C will charge the FTDF  
16 COMMITTEE for its services in connection with the Compass Action and be compensated from  
17 the FTDF estate, subject to FTDF's right to review and object to such fees and costs in  
18 accordance with the Second Order.

#### **IV. STIPULATED REPRESENTATION PERMITTED**

20           8. Stipulated representation of a debtor's estate by an official committee is  
21 permissible under *Liberty Mutual Insurance Company v. Official Unsecured Creditors*  
22 *Committee of Spaulding Composites Co. (In re Spaulding Composites Co.)*, 207 B.R. 899, 904  
23 (9th Cir. BAP 1997), which stated:

This case is somewhat unusual in that the setting for derivative litigation often involves a debtor-in-possession ("DIP") who is hostile to proposed litigation. See e.g., *Curry*, 57 B.R. at 828; *Louisiana World Exposition v. Federal Ins. Co.*, 858 F.2d at 247; *In re STN Enterprises*, 779 F.2d at 901. In that setting, the concern is that the DIP is failing to attend to litigation which it should pursue. Here, however, rather than opposing the Committee's suit, Spaulding approved of it, and Liberty argues the converse to the above — that is, Liberty argues that the Committee

1           is fostering estate litigation which should not be pursued. The  
 2           question, then, is whether a DIP may stipulate to  
 3           representation by an unsecured creditors' committee. We hold  
 4           that it may.

5           See also, *In re Commodore Inter. Ltd.*, 262 F.3d 96, 99-100 (2nd Cir. 2001); *In re Walnut*  
 6           *Leasing Co.*, 1999 WL 72967 (E.D. Pa. 1999). FTDF also relies on Bankruptcy Code  
 7           § 1103(c)(5), which states: "A committee appointed under section 1102 of this title may perform  
 8           such other services as are in the interest of those represented." 11 U.S.C. § 1103(c)(5). See,  
 9           *Official Committee of Unsecured Creditors of Cybergenics Corp. ex rel. Cybergenics Corp. v.*  
 10           *Chinery*, 330 F.3d 548, 562 (3rd Cir. 2003), *contra*, *In re Fox*, 305 B.R. 912 (10th Cir. BAP  
 11           2004). The defense of the FTDF by the FTDF COMMITTEE, including the prosecution of a  
 12           motion to dismiss or similar relief will benefit the FTDF estate and the equity security holders  
 13           represented by the FTDF COMMITTEE.

#### STIPULATION

14           FTDF stipulates that its estate be represented by FTDF COMMITTEE in the  
 15           Compass Action.

16           RAY QUINNEY & NEBEKER P.C.  
 17           ANNETTE JARVIS  
 18           STEVEN C. STRONG

19           And

20           SCHWARTZER & MCPHERSON LAW FIRM  
 21           LENARD E. SCHWARTZER  
 22           JEANETTE E. McPHERSON

23           \_\_\_\_\_  
 24           /s/ Steven C. Strong  
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 28           Salt Lake City Utah, 84111  
 29           Counsel for USA Capital First Trust  
 30           Deed Fund, LLC

1 STUTMAN, TREISTER & GLATT, P.C.  
2

3 /s/ Eve H. Karasik  
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7 Los Angeles, CA 90067  
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9 Security Holders of USA Capital First Trust Deed,  
10 Fund, LLC

11 OFFICE OF THE UNITED STATES TRUSTEE

12 August B. Landis, Esq.  
13 Assistant United States Trustee

14 IT IS SO ORDERED.

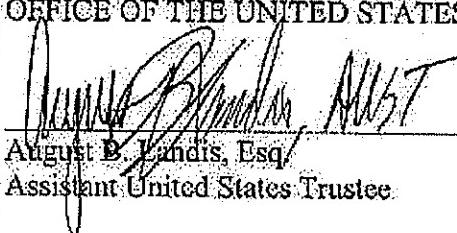
15 **ORDER**

16 ####

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10 Fund, LLC  
11

12 REVIEWED  
13 OFFICE OF THE UNITED STATES TRUSTEE  
14

15   
16 August B. Landis, Esq.  
17 Assistant United States Trustee  
18

19 ORDER  
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21 IT IS SO ORDERED.  
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23 #####  
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